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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CALVIN DURAL PRITCHETT, JR.,

Defendant and Appellant.

D049929

(Super. Ct. No. CR128013)

APPEAL from a judgment of the Superior Court of San Diego County, Allan J. Preckel, Judge. Affirmed.

In 1992, Calvin Dural Pritchett, Jr. entered a negotiated guilty plea to second degree murder (Pen. Code, § 187, subd. (a)) and admitted he personally used a firearm (*id.*, § 12022.5, subd. (a)). The court sentenced him to prison for 20 years to life: 15 years to life for murder enhanced by the five-year upper term for personal firearm use. The court ordered Pritchett to pay a \$10,000 restitution fine. (Former Gov. Code, § 13967, repealed by Stats. 2003, ch 230, § 2, eff. Aug. 11, 2003; Pen. Code, § 2085.5.)

On August 28, 2006, Pritchett filed a petition for writ of coram nobis. In the coram nobis petition, Pritchett claimed that his guilty plea was obtained through false representations by his trial counsel. The trial court denied the coram nobis petition.

FACTS

From the record before this court, it appears that Pritchett fatally shot a prosecution witness in a criminal proceeding against Pritchett's father for operating a brothel. The People charged Pritchett with first-degree murder. He entered the guilty plea to second degree murder after the trial court stated, "[T]he court understands you to be saying that although you may dispute your factual culpability to some greater or lesser degree in this case, nonetheless, as a matter of law, you wish to plead guilty to this charge of second degree murder and admit the allegation in order to avoid the potential of a greater sentence or harsher consequences befalling you were this case to proceed to trial."

In the petition for writ of coram nobis filed in 2006, Pritchett states that after denying his motion to withdraw the guilty plea, the court sentenced him to prison for 20 years to life.¹ In 2005, Pritchett filed habeas corpus petitions in the trial court and with this Court alleging violation of his plea agreement. The petitions were denied and the Supreme Court denied review.

In a declaration accompanying the petition for a writ of coram nobis, Pritchett claims that numerous acts of his trial counsel reflected ineffective assistance. Apparently

¹ Pritchett did not appeal and this court denied a motion to file an untimely appeal. In 1997, Pritchett filed a petition for a writ of habeas corpus claiming, among other things, ineffective assistance of trial counsel.

aware that ineffective assistance of counsel cannot generally be the basis of a petition for a writ of coram nobis (see generally *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 176), Pritchett claims his guilty plea was not free and voluntary because it was entered as a result of his trial counsel's misrepresentations of fact that: if he followed the "program[,]" he would be paroled in seven and a half to 10 years; he would be on parole for 48 months if he complied with the term of parole.

DISCUSSION

A. *Standard of Review*

We review a trial court's denial of a petition to vacate judgment for abuse of discretion. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192.)

B. *Limited Remedy*

"In this state, *coram nobis* is a limited remedy of narrow scope which is available (where no other remedy exists) to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court." (*People v. Sharp* (1958) 157 Cal.App.2d 205, 207.) Generally, the writ is available when "the petitioner has shown that some fact existed that was not presented at the trial on the merits, through no fault of petitioner, but which if presented, would have prevented the rendition of judgment" and "petitioner has shown that the facts on which he or she relies were not known and could not, in the exercise of due diligence, have been

discovered at any time substantially earlier than the time of the motion for the writ."

(6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Judgment, § 184, p. 213.)

As the People correctly point out, a writ of coram nobis is not a proper remedy to claim ineffective assistance of counsel. The trial court here relied on this principle in denying Pritchett's petition for writ of coram nobis. Citing *People v. Gilbert* (1944) 25 Cal.2d 422, 442-443, Pritchett seeks to avoid this well-settled principle by arguing that the principle does not apply when "the record discloses evidence tending to show that the free will and judgment of a defendant was overreached by unjustified representations of their counsel apparently substantially corroborated by acts or statements of a responsible state officer, such as the trial court, and is in good faith relied upon by the defendant, and actually operates to preclude the exercise of free will and judgment on the part of the defendant."

The record does not support Pritchett's claim. When Pritchett entered the guilty plea, the trial court advised him that even though he might become eligible for parole after serving two-thirds of the sentence, the sentence was indeterminate and he could serve his natural life in prison. Pritchett acknowledged that he understood the court's statement. Pritchett told the trial court he was entering the guilty plea freely and voluntarily because he believed it was in his best interest to do so. When the trial court asked if he understood that, if paroled, he "could be on parole potentially for the rest of [his] life, Pritchett answered in the affirmative. While Pritchett claims he entered the guilty plea due to his trial counsel's misrepresentations regarding the consequences —

and despite Pritchett's argument to the contrary — we find this claim not corroborated by the record.

DISPOSITON

The trial court's order denying the petition for writ of coram nobis is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.